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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,728	03/24/2004	Corey E. Hoffman	WEAT/0033.D3	3698
7590	04/13/2005		EXAMINER	
William B. Patterson MOSER, PATTERSON & SHERIDAN, L.L.P. Suite 1500 3040 Post Oak Blvd. Houston, TX 77056			WALKER, ZAKIYA NICOLE	
			ART UNIT	PAPER NUMBER
			3672	
DATE MAILED: 04/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/807,728	HOFFMAN ET AL.	
	Examiner Zakiya N. Walker	Art Unit 3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 January 2005.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-11 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 12, 17 and 18 is/are rejected.
- 7) Claim(s) 2-8, 13-16, 19 and 20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02282005
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 12, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by WO'291 (cited by applicant).

WO'291 discloses an apparatus that includes, with respect to claim 1, a tool for operating a fluid actuated downhole tool 6, comprising: an upper tubular portion 30 defining a pathway for the downward flow of power fluid 292 from a pipe thereabove; a restriction portion 110 for increasing the velocity of the power fluid and a return fluid 290 and creating an area of low pressure therearound; and a diverter portion 93B for directing the high velocity power fluid and the return fluid, the return fluid acting upon a piston 70 in the downhole tool to actuate the downhole tool. With respect to claim 12, the reference discloses an apparatus that includes a downhole tool 6 comprising: a tool member 107 having a two position member 70 movable between an extended and a retracted position, the two position member biased in the extended position by a biasing member (pressure to 130); and an actuating assembly having a restriction member 110 and a diverter member 93B, whereby a suction force is created as a power fluid is pumped through the restriction member and the diverter member, the suction force acting upon the two position member to actuate the tool member. With respect to claims

17 and 18, the reference discloses a method that includes a method of actuating a downhole tool in a wellbore, comprising: pumping a power fluid through a restriction member to increase the velocity of the power fluid; creating a suction force below the restriction member; directing a portion of the suction force toward a two position member in the downhole tool to actuate the downhole tool; and moving the two position member between an extended position and a retracted position.

***Allowable Subject Matter***

3. Claims 2-8, 13-16, 19, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zakiya N. Walker whose telephone number is (571) 272-7039. The examiner can normally be reached on Monday-Friday, 8:30 AM-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Zakiya N. Walker  
Primary Examiner  
Art Unit 3672

zw  
April 8, 2005